IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1965

No. 351

J. L. KAMSLER,

Petitioner,

vs.

H. A. SEINSHEIMER CO. of Cincinnati, Ohio,

Respondent.

BRIEF IN OPPOSITION TO CERTIORARI.

REASONS FOR DENYING THE WRIT.

The decision rendered by the Court of Appeals for the Seventh Circuit in the case at bar is not in conflict with any decision on the same matter rendered by any other Court of Appeals. Although the petitioner herein asserts the contrary, no authority whatsoever is cited by the petitioner which in any way reveals such a conflict. Likewise, the Court of Appeals for the Seventh Circuit has not decided any federal question in a way which is in conflict with the applicable decisions of this Honorable Court, and petitioner has cited absolutely no authority to show otherwise. We respectfully submit that the decision of the Court of Appeals in the case at bar is absolutely correct and proper.

Although Kamsler's petition for writ of certiorari is some improvement over his prior briefs, his petition still is not free from burdensome, irrelevant, immaterial, and scandalous matter. A perusal of Kamsler's petition clearly manifests this fact.

On page two of the Petition, four questions are presented. None of the questions are material however. The fact is that the District Court *did* take jurisdiction of the case (although the defendant respectfully asserts that it should not have done so). The diversity of the citizenship between the plaintiff and the defendant in this action was never disputed. Secondly, petitioner never did base jurisdiction of this matter on Section 1343 of Title 28, United States Code. Even if he had, however, such an attempt would have been futile inasmuch as this particular case would not fall within the meaning of that Section. Petitioner further contends that the trial court's "hasty decisions" constitutes an additional issue. The opinion rendered by the Court of Appeals for the Seventh Circuit clearly refutes any notion that the trial court made hasty decisions. Painstaking consideration was given to this case by the trial court. As the decision of the Court of Appeals makes clear, the trial court held numerous hearings, required the filing of extensive briefs, and consumed almost six months before terminating this outrageous proceeding. Finally, no legitimate issue is presented regarding any failure of the trial court to follow "the accepted rules of pleading of federal civil procedure". Petitioner has been unable to point out one single rule which in any way could be said to have been violated by the trial court.

The "Statement of the Case", contained on page three of the Petition, requires little comment. Petitioner's statement is based almost entirely on matters *de hors* the rec-

ord. This case was disposed of on the pleadings—not on the substantive matters alleged. Accordingly, the contents of petitioner's Statement are immaterial.

That Kamsler's Petition is another "exercise of litigious futility" is clearly manifested upon a casual reading of his "Reasons for Granting Writ". Although three purported reasons are stated, they are unsupported by any relevant authority whatsoever. Furthermore, the reasons are taken from old rule 38—a revision of that rule being now contained in Rule 19.

Petitioner now attempts, for the first time in this litigation, to base the trial court's jurisdiction on 28 U.S.C.A. § 1343. Neither this section nor 42 U.S.C.A. 1983 nor 42 U.S.C.A. 1985 were ever alleged in any of petitioner's pleadings, including his proposed second amended complaint. Plaintiff cites the case of *Monroe* v. *Pape,* 365 U.S. 167 (1961), but the applicability of that case to the facts in the case at bar is non-existent. The *Monroe* case involved the deprivation of an individual's rights by police officers acting "under color of law". It did not involve the alleged deprivation of one individual's rights by another individual. In any event, the various complaints filed by the petitioner in the trial court were never dismissed on the ground that the District Court did not have jurisdiction over the matter. Petitioner's original and first amended complaints were dismissed because they failed to state a claim upon which relief could be granted. From these rulings of the District Court the petitioner never appealed.

Although it is not clear, the petitioner apparently did appeal from that ruling of the District Court which denied leave to file a third, or second amended, complaint. It is of course well established that the matter of deter-

mining the propriety of amendments "not of course" brings into play the District Court's discretionary power. Yet the petitioner has given absolutely no reason why the District Court should not have denied his motion to file a second amended complaint. The ruling of the Court was discretionary and it is respectfully submitted there was no abuse of discretion. Petitioner's original proposed second amended complaint not only was substantively and grammatically defective, but it contained red and blue trimmings which of course are not reflected in the printed exhibit to plaintiff's petition. In any event, petitioner has failed to set forth how the District Court abused its discretion. The decision of the Court of Appeals in affirming the District Court was correct and proper.

Although other questions raised on appeal concerning the jurisdiction of the District Court, the service of summons, the jurisdictional amount, the adequacy of the notice of appeal, and the adequacy of plaintiff's brief and appendix, were not reached or decided by the Court of Appeals, we respectfully submit that a decision on any of these questions would ultimately have resulted in the Court of Appeals affirming the decision of the District Court. Petitioner's notice of appeal to the Court of Appeals was entirely defective, confusing, and incomprehensible. It was impossible to determine just what it was that Kamsler was appealing from. Furthermore the plaintiff's brief and appendix completely disregarded and violated the rules of the Court of Appeals for the Seventh Circuit and, in particular, their rules numbered 16(d) & (c) and 17(a). It is further submitted that Kamsler's claim for $20,000,000 was absurd and certainly not made in good faith. Finally, it is our belief that the District Court did not have personal jurisdiction over the defendant for the reason that summons was served upon an individual who was not, and never had been, an officer, managing or general agent, or

employee of the defendant, H. A. Seinsheimer Co. In any event, it was unnecessary for the Court of Appeals to pass upon these issues. The inadequacy of petitioner's proposed second verified amended complaint is abundantly evident on its face.

CONCLUSION.

It is respectfully submitted that the Petition for Certiorari should be denied. No special or important reasons have been given by the petitioner for the granting thereof. No conflict between the decision of the Court of Appeals for the Seventh Circuit and any other decision has been shown. Petitioner has completely failed to show how his original and first amended complaints stated a claim upon which relief could be granted. Likewise, petitioner failed to show that the District Court abused its discretion in denying him leave to file his proposed second amended, or third, complaint. The decision of the Court of Appeals for the Seventh Circuit was correct and we respectfully request that this Petition for Certiorari be denied.

Respectfully submitted,

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